

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

B&B FUNDING, LLC	:	CIVIL ACTION
	:	
v.	:	
	:	
GEORGE VENTURELLA, et al.	:	NO. 07-cv-01212-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

July 3, 2007

Plaintiff is a firm, located in Jenkintown, Pennsylvania, which helps to obtain mortgage financing for large projects. Plaintiff is suing a Florida firm, an Illinois firm, and individuals associated with those firms, for \$780,000 plus counsel fees because, allegedly, after employing plaintiff to obtain a \$19 million mortgage commitment, they failed and refused to provide the underlying financial information which would have been necessary to enable plaintiff to complete its task of obtaining the financing.

The defendants have filed a motion to dismiss, asserting that this court lacks *in personam* jurisdiction over some or all of them, that the case should be transferred to Florida for disposition, and that, in any event, the complaint fails to state valid causes of action and is subject to dismissal under Fed. R. Civ. P. 12(b)(6). The defense motion is accompanied by various sworn declarations, but does not purport to be a motion for summary judgment.

My review of the record thus far supplied leads to the following tentative conclusions: (1) that it is conceivable that one or more of the named defendants is bound by a choice-of-forum clause in the pertinent "contract"; (2) that it is highly probable that this court lacks *in personam* jurisdiction over several of the defendants; (3) that the alleged "contract" is exceedingly ambiguous and confusing, and may not be enforceable against any of the defendants, and is almost certainly not enforceable against any of the defendants who did not sign the agreement; but (4) that plaintiff should be afforded an opportunity to file an amended complaint which clarifies these points.

Apparently, one or more of the defendants needed financing for a major project in the proximity of Disney World in Florida, and contacted a Florida bank for such financing. The Florida bank, in turn, referred the proposal to plaintiff, but there are questions concerning whether any of the defendants was made aware of this referral. Plaintiff, in turn, drafted and submitted for signature the "contract" in question. That document, dated October 17, 2006, states:

"The following shall serve as a letter of Intent and Non-Circumvention Agreement between GV Designer Homes and B&B Funding LLC in order to clarify the structure of a loan up to nineteen million dollars (\$19,000,000). The proposal is subject to approval and/or modification by the Lender/Investor loan committee. This is not a loan commitment.

Subject to Lender/Investor loan approval we wish to offer you a proposal based on the following terms and conditions:"

Among other things, the document provides:

"It is understood and agreed that this agreement is a reciprocal one between the signatories, concerning their privileged contacts and information and includes derivative and subsidiary companies/organizations.

The undersigned confirms that by the execution of this Letter of Intent, any LLC, organization, group, or firm of which he is a member, party, principal, agent or employee is bound by this agreement and that such organization has authorized the undersigned to so act."

The letter is addressed to the defendant George Venturella, and provides a signature line for his signature only. However, he did not sign the document. The only defendant to sign the document is "Steve Parmee, Director."

It appears probable that Mr. Parmee is a principal of the defendant Standard Property Development, LLC.

The last paragraph of the letter agreement reads as follows:

"Please sign and return this agreement. If not accepted, this offer will expire at Five (5) P.M. Eastern Time on Tuesday, October 24, 2006. If you have any questions, please feel free to contact the undersigned."

But the document was not signed on behalf of plaintiff until October 26, 2006, and Mr. Parmee signed it on October 25, 2006.

There are many other ambiguities and uncertainties reflected on the face of the document, which, in some respects, seems to consist of a miscellaneous collection of legal phrases of no particular relevance.

According to the complaint, plaintiff was paid a "processing" fee of \$2,500, and undertook to obtain the required financing, but was unable to obtain the financing because the defendants failed and refused to provide the required underlying personal financial information. According to the defendants' sworn declarations, they had no knowledge of plaintiff's involvement in obtaining financing, and had in fact provided all the necessary financial information to the Florida bank which engaged plaintiff.

While it seems unlikely that plaintiff can establish liability on behalf of any of the defendants with the possible exception of Mr. Parmee and perhaps Standard Property Development, LLC, plaintiff will be afforded an opportunity to file an amended complaint which clarifies its claims. The present complaint purports to allege liability on behalf of "the defendants," without clarifying the theory upon which the liability of each is premised.

An Order follows.

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ORDER

AND NOW, this day of July 2007, IT IS ORDERED:

1. Plaintiff's complaint is DISMISSED, with leave to file an amended complaint within 30 days.
2. Defendants' motion challenging *in personam* jurisdiction and/or venue will be held in abeyance, pending filing of an amended complaint.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.